

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

**FREEDOM FROM RELIGION
FOUNDATION, INC.; ANNE NICOL GAYLOR;
PAUL GAYLOR; DAN BARKER;
PHYLLIS ROSE; and JILL DEAN,**

Plaintiffs,

v.

Case No.: 08-CV-588

**PRESIDENT BARACK OBAMA; WHITE
HOUSE PRESS SECRETARY ROBERT L.
GIBBS; WISCONSIN GOVERNOR JIM DOYLE;
and SHIRLEY DOBSON, CHAIRMAN OF THE
NATIONAL DAY OF PRAYER TASK FORCE,**

Defendants.

FEDERAL DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants President Barack Obama and the White House Press Secretary Robert L. Gibbs ("federal defendants"), by their undersigned counsel, hereby answer the plaintiffs' First Amended Complaint (Dkt. No. 38, 02/10/2009) as follows:

FIRST DEFENSE

Plaintiffs lack standing.

SECOND DEFENSE

Plaintiffs' claims are not redressable by this Court.

THIRD DEFENSE

Plaintiffs' claims are moot.

FOURTH DEFENSE

Plaintiffs have failed to state a claim upon which relief can be granted.

The federal defendants answer each of the numbered paragraphs in the First Amended Complaint in correspondingly numbered paragraphs:

1. This paragraph sets forth plaintiffs' characterization and summary of this action, to which no response by the federal defendants is required. To the extent a response is required the federal defendants deny that plaintiffs are entitled to any of the relief they request.

2. This paragraph sets forth plaintiffs' conclusions of law regarding jurisdiction, to which no response by the federal defendants is required. To the extent a response is required, the federal defendants deny that this Court has jurisdiction over this case.

3. This paragraph sets forth plaintiffs' conclusions of law regarding venue, to which no response by the federal defendants is required.

4. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

5. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

6. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

7. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

8. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

9. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

10. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

11. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

12. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

13. Admitted.

14. This paragraph sets forth plaintiffs' characterization of this action, to which no response by the federal defendants is required. To the extent a response is required, the federal defendants deny that Public Law 100-307 violates the Establishment Clause of the First Amendment to the United States Constitution, and deny that plaintiffs are entitled to any of the relief sought, but admit that Public Law 100-307 mandates Presidential National Day of Prayer proclamations.

15. Admitted.

16. The first sentence of this paragraph sets forth plaintiffs' characterization of this action, to which no response by the federal defendants is required. The federal defendants deny the allegations contained in the second sentence of this paragraph, except to admit that the Office of the White House Press Secretary publishes presidential proclamations, including the President's National Day of Prayer proclamations, to various press distribution lists, and that the news media has reported on such National Day of Prayer proclamations. The federal defendants

deny that plaintiffs are entitled to the injunctive relief sought.

17. Admitted.

18. This paragraph sets forth plaintiffs' characterization of this action, to which no response by the federal defendants is required.

19. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

20. This paragraph calls for a legal conclusion to which no response is required.

21. The federal defendants admit that Presidents have issued National Day of Prayer proclamations in the past, that President Obama issued a National Day of Prayer proclamation in 2009, that Public Law 100-307 mandates that the President issue National Day of Prayer proclamations, and that President Obama intends to comply with the provisions of Public Law 100-307.

22. The federal defendants deny all the allegations contained in this paragraph.

23. As this paragraph does not contain any factual allegations and is argumentative, no response is required.

24. The federal defendants deny all the allegations contained in this paragraph.

25. This paragraph calls for a legal conclusion to which no response is required.

26. The federal defendants deny all the allegations contained in this paragraph, except to admit that the Office of the White House Press Secretary publishes presidential proclamations, including the President's National Day of Prayer proclamations, to various press distribution lists.

27. The federal defendants lack knowledge or information sufficient to form a belief

about the truth of the allegation that the NDP Task Force acts under the personal direction of Mrs. Dobson. The federal defendants deny all the remaining allegations contained in this paragraph. To the extent this paragraph calls for a legal conclusion, no response is required.

28. The federal defendants deny all the allegations contained in this paragraph, except to admit that the preamble to President Bush's 2008 National Day of Prayer Proclamation included the language, "[t]his year's theme, 'Prayer! America's Strength and Shield,' is taken from Psalm 28:7," and included a biblical quotation from Psalm 28:7.

29. The federal defendants admit that the preamble to President Bush's 2008 proclamation contains, inter alia, the language quoted in paragraph 29 of the Amended Complaint. The federal defendants respectfully refer the Court to that proclamation for its full and complete contents.

30. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegation that the NDP Task Force is under the direction and control of Mrs. Dobson, and deny all the remaining allegations contained in this paragraph, except to admit that Congress did not mandate that President Bush's 2008 National Day of Prayer proclamation incorporate any theme or any biblical reference, and that the preamble to President Bush's 2008 Proclamation included the language, "[t]his year's theme, 'Prayer! America's Strength and Shield,' is taken from Psalm 28:7," and included a biblical quotation from Psalm 28:7.

31. The federal defendants deny all the allegations contained in this paragraph.

32. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

33. The federal defendants deny all the allegations contained in this paragraph, except

to admit that the preamble to President Bush's 2008 Proclamation included the language, "[t]his year's theme, 'Prayer! America's Strength and Shield,' is taken from Psalm 28:7," and included a biblical quotation from Psalm 28:7.

34. The federal defendants deny all the allegations contained in this paragraph.

35. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegation that the NDP Task Force is under the direction and control of Mrs. Dobson, and deny all the remaining allegations contained in this paragraph.

36. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

37. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

38. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

39. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

40. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

41. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

42. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

43. The federal defendants lack knowledge or information sufficient to form a belief

about the truth of the allegation that the NDP Task Force is under the direction and control of Mrs. Dobson, and deny all the remaining allegations contained in this paragraph.

44. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

45. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

46. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

47. The federal defendants deny all the allegations contained in this paragraph, except to admit that the preamble to President Bush's 2008 Proclamation included the language, "[t]his year's theme, 'Prayer! America's Strength and Shield,' is taken from Psalm 28:7," and included a biblical quotation from Psalm 28:7. To the extent this paragraph calls for a legal conclusion, no response is required.

48. The federal defendants deny all the allegations contained in this paragraph, except to admit that the Office of the White House Press Secretary publishes presidential proclamations, including the President's National Day of Prayer proclamations, to various press distribution lists.

49. The federal defendants deny all the allegations contained in this paragraph.

50. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

51. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

52. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

53. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

54. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

55. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

56. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

57. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

58. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

59. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, except to deny that the federal defendants align Presidential National Day of Prayer proclamations with the NDP Task Force.

60. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

61. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

62. The federal defendants lack knowledge or information sufficient to form a belief

about the truth of the allegations in this paragraph.

63. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

64. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, except to deny that past Presidential proclamations explicitly incorporated the NDP theme and chosen Biblical reference, but admit that the preamble to President Bush's 2008 Proclamation included the language, "[t]his year's theme, 'Prayer! America's Strength and Shield,' is taken from Psalm 28:7," and included a biblical quotation from Psalm 28:7.

65. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

66. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

67. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

68. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

69. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

70. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

71. The federal defendants lack knowledge or information sufficient to form a belief

about the truth of the allegations in this paragraph.

72. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

73. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

74. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

75. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

76. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

77. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

78. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

79. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

80. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

81. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

82. The federal defendants lack knowledge or information sufficient to form a belief

about the truth of the allegations in this paragraph.

83. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

84. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

85. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

86. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

87. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

88. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

89. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

90. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

91. The federal defendants deny all the allegations contained in this paragraph, except to admit that the Office of the White House Press Secretary publishes presidential proclamations, including the President's National Day of Prayer proclamations, to various press distribution lists, and that these proclamations are therefore reported in the public media, and that presidential proclamations, including the President's National Day of Prayer proclamations, are posted on the White House's website, but specifically deny that the White House Press Secretary is responsible for publishing such proclamations on the White House's website.

92. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

93. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

94. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

95. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegation that the individual plaintiffs in this lawsuit, as well as members of FFRF in all 50 United States, are subjected to public celebrations of religion in the public realm, and deny all the remaining allegations contained in this paragraph.

96. The federal defendants deny that federal governmental celebration of the annual National Day of Prayer has increased dramatically in recent years, and deny that Presidential

Prayer Proclamations are projected throughout the nation, but admit that the White House Press Secretary publishes presidential proclamations, including the President's National Day of Prayer proclamations, to various press distribution lists, and that these proclamations are therefore reported in the public media. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

97. The federal defendants deny that Presidential National Day of Prayer proclamations or designation of a National Day of Prayer constitute the governmental endorsement of religion. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in this paragraph.

98. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

99. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

100. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

101. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

102. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

103. As this paragraph does not contain any factual allegations and is argumentative, no response by the federal defendants is required.

104. The federal defendants deny the allegation that the President is actively promoting

religion. As the remainder of this paragraph does not contain any factual allegations and is argumentative, no response is required.

105. The federal defendants admit that Presidential proclamations are not intended to be secret, but lack knowledge or information sufficient to form a belief as to whether gubernatorial proclamations are intended to be secret or as to the individual plaintiffs' awareness of prayer proclamations. The remaining allegations of this paragraph contain a hypothetical to which no response is required.

106. As this paragraph does not contain any factual allegations and is argumentative, no response by the federal defendants is required.

107. This paragraph does not contain any factual allegations, but instead contains a legal conclusion to which no response is required.

108. This paragraph does not contain any factual allegations, but instead contains a legal conclusion to which no response is required.

109. The federal defendants admit that Presidential proclamations are publicly available, deny that any Presidential proclamations endorse religion, and lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in this paragraph.

110. This paragraph does not contain any factual allegations, but instead contains a legal conclusion to which no response is required.

111. This paragraph does not contain any factual allegations, but instead contains a legal conclusion to which no response is required.

112. The federal defendants admit that Presidential prayer proclamations are not secret,

but lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in this paragraph

113. The federal defendants deny that Presidential prayer proclamations identify “believers” as “political insiders,” but lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in this paragraph.

114. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

115. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

116. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph, except to admit that Public Law 100-307 mandates Presidential Proclamations of a National Day of Prayer each year, that President Obama issued such a proclamation in 2009, that President Obama intends to comply with the provisions of Public Law 100-307 in the future, and that the White House Press Secretary publishes presidential proclamations, including the President’s National Day of Prayer proclamations, to various press distribution lists.

117. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations of prayer and public celebrations of religion in the public domain by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

118. The federal defendants deny all the allegations contained in this paragraph, except

to admit that Presidential National Day of Prayer proclamations are publicly available.

119. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by the various governors, and deny all the remaining allegations contained in this paragraph.

120. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations and designations of days of prayer by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

121. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

122. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by the various governors, and deny all the remaining allegations contained in this paragraph.

123. As this paragraph does not contain any factual allegations and is argumentative, no response by the federal defendants is required.

124. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by public officials other than by the President, and deny all the remaining allegations contained in this paragraph.

125. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

126. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding proclamations by the various governors, and deny all

the remaining allegations contained in this paragraph.

127. The federal defendants deny all the allegations contained in this paragraph.

128. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph. To the extent this paragraph calls for a legal conclusion, no response is required.

129. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

130. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph. To the extent this paragraph calls for a legal conclusion, no response is required.

131. The federal defendants deny the allegation that Mrs. Dobson or the NDP Task Force has been and continues to act in concert with the President, but lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

132. The federal defendants lack knowledge or information sufficient to form a belief about the truth of the allegations that Mrs. Dobson continues to be a willful participant with state officials in joint action or regarding state prayer proclamations, and deny all the remaining allegations contained in this paragraph, except to admit that President Bush's 2008 Proclamation included the language, "[t]his year's theme, 'Prayer! America's Strength and Shield,' is taken from Psalm 28:7," and included a biblical quotation from Psalm 28:7.

133. The federal defendants deny all the allegations contained in this paragraph.

The remainder of the First Amended Complaint constitutes a prayer for relief, to which

no response is required. To the extent a response is required, the federal defendants deny that plaintiffs are entitled to any of the relief they request.

Each and every allegation of the First Amended Complaint not heretofore expressly admitted is hereby denied.

Dated: June 16, 2009

Respectfully submitted,

TONY WEST
Assistant Attorney General

JAMES GILLIGAN
Assistant Branch Director

/s/ Brad P. Rosenberg
BRAD P. ROSENBERG (DC Bar 467513)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
Tel: (202) 514-3374
Fax: (202) 616-8460
brad.rosenberg@usdoj.gov

Mailing Address:
Post Office Box 883
Washington, D.C. 20044

Courier Address:
20 Massachusetts Ave., N.W.
Washington, D.C. 20001

COUNSEL FOR DEFENDANTS
PRESIDENT BARACK OBAMA AND
WHITE HOUSE PRESS SECRETARY
ROBERT L. GIBBS

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2009, I electronically filed a copy of the Federal Defendants' Answer and Affirmative Defenses using the ECF System for the Western District of Wisconsin, which will send notification of that filing to all counsel of record in this litigation.

/s/ Brad P. Rosenberg
Brad P. Rosenberg